VIII. Invalid Imposition of Penal Restrictions

You have just been informed that an accusation has been made against you and the bishop has immediately imposed penal restrictions on your ministerial ability.

These passages explain the proper imposition and limits of the bishop's penal restrictions.


"Per Canon 1722, the Ordinary is allowed to prohibit the accused from the exercise of sacred ministry or an ecclesial office and position. In addition, he can impose or forbid residence in a certain place or territory as well as prohibit public participation in the Eucharist."

"This canon, however, must be interpreted strictly per Canon 18, which means that the Ordinary cannot restrict all of their rights, but only those specific rights which are mentioned in the canon. Thus, a priest cannot be restricted from celebrating private mass or from absolving penitents in danger of death."

"In addition, clerics cannot be deprived of decent support and/or remuneration. The application of canon 1722 will always tarnish the reputation of the person under preliminary investigation; so it should only be applied when necessary for as short a time as possible."

"This problem, (i.e., invalid preliminary investigation) is compounded by the fact that the Ordinary can pursue a preliminary investigation without ever consulting the canonists within his diocese. All of this leaves a wide margin for error which, with regard to the preliminary investigation, means there is a large chance that the rights of the person who is under preliminary investigation might be violated."

Only After Preliminary Investigation Can Administrative Leave Be Imposed

"Is there a dubium juris (doubt of Law) about the timing of the imposition of 'administrative leave' ...? It would seem that there is not. Canonical tradition, the text and content of c. 1722, the mind of the legislator and parallel passages in the Oriental Code all lead to the same conclusion. 'Administrative leave' may be imposed only after the completion of a preliminary investigation. The accused must be cited and given an opportunity to respond, at least extra-judicially, to the allegation and to the proposal to impose 'administrative leave.' This initial citation and hearing can occur before the penal process if formally inaugurated, either in conjunction with the Ordinary’s decree initiating a penal process or subsequently. However, 'administrative leave' can only be imposed in connection with a penal process, whether actual or imminent. It cannot be imposed on the basis of accusation alone. This conclusion is settled law, inconvenient perhaps, but still the law."
No Leave without Due Process

Frans Daneels, O. Praem, Promotor of Justice for the Apostolic Signatura, admitted that a decree of the Signatura issued April 22, 1997 seems to uphold the thesis of Fr. Beal at least indirectly:

Said precautionary precepts … can be imposed in quodlibet processus stadio (i.e., at any stage of the process), but there is no doubt that no process can exist before the decree mentioned in c. 1718; … From the acts it is established that the Ordinary, contrary to the prescription of law, imposed those precepts outside of a penal process, when a decree had only been issued about the beginning of the prior (i.e., preliminary) investigation (cf. c. 1717), not a decree about the beginning of the penal process, for one does not find in the acts the decree mentioned in c. 1718, nor the citation for the administrative penal process of Canon 1720, §1, nor the accusatory libellus 1721, nor the decree of acceptance of the libellus and citation of the accused, according to Canons 1505, §1 and 1507, §1, nor any act of a true penal process…

Daleels concluded that the imposition of precautionary measures in a case presumes that the penal process has already been initiated, that the accused has been cited in regard to these measures, and the promotor of justice has been heard. When the motivating cause ceases, those preliminary measures must be revoked.

²Cf. B. Daly, Administrative Leave of Priests, 474.
³J. Beal, Administrative Leave: C. 1722 Revisited, 316-319.